(18)

No. 99-1408

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

GAIL ATWATER, AND MICHAEL HAAS as next friend of Anya Savannah Haas and Mackinley Xavier Haas,

Petitioners,

v.

CITY OF LAGO VISTA, BART TUREK, AND FRANK MILLER,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed February 22, 2000
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RELEVANT DOCKET ENTRIES

U.S. District Court
Western District of Texas (Austin)

9/12/97	–	Case assigned to Honorable Sam Sparks (mcl) [Entry date 09/16/97]
9/12/97	1	Notice for Removal Filing Fee: $150.00 Receipt # 259256 (mcl) [Entry date 09/16/97]
9/12/97	2	Advisory to the court filed by City of Lago Vista, Bart Turek, Frank Miller in re: no motions are pending in the 98th Judicial District Court of Travis County, Texas prior to the removal (mcl) [Entry date 09/16/97]
9/16/97	–	Court file prepared and forwarded to Judge Sparks. (mcl)
9/22/97	3	Order to supplement record. (xc 9.22.97) (mcl)
10/2/97	4	Response by City of Lago Vista, Bart Turek, Frank Miller order [3-1] "Notice of Compliance With Order to Supplement Record" (mcl) [Entry date 10/03/97]

* * *

10/21/97	8	Scheduling order setting Joining of parties, amending of pleadings on 2/20/98 Deadline for filing of all motions 5/7/98 Discovery cutoff 4/20/98 Pretrial order to be submitted on or before 5/22/98; Docket Call set for 11:00 5/29/98; Alternate Dispute Resolution Report due by 12/22/97 m p (mcl) [Entry date 10/22/97]

* * *

11/13/97 11 Motion by Gail Atwater, Michael Haas for leave to file amended complaint (mcl) [Entry date 11/14/97]

11/18/97 12 Second Amended complaint by Gail Atwater, Michael Haas, amending (Pages: 12) (mcl)

* * *

12/1/97 16 Order denying renewed motion to remand [13-1], striking amended complaint [12-1], denying motion for leave to file amended complaint [11-1]. (mailed 12/2/97) (td) [Entry date 12/02/97]

* * *

12/12/97 – RECEIVED Defendant's Motion to Dismiss . . . (td)

* * *

12/18/97 19 Motion by City of Lago Vista, Bart Turek, Frank Miller with memorandum in support to dismiss, or in the alternative for summary judgment (mcl)

* * *

12/24/97 21 Motion by Gail Atwater, Michael Haas to extend time to respond to Defendants' 12(b) (6) motion to dismiss or, in the alternative, Rule 56 motion and brief for summary judgment (mc2)

* * *

12/30/97 24 Order granting motion to extend time to respond to Defendants' 12(b) (6) motion to dismiss or, in the alternative, Rule 56 motion and brief for summary judgment

[21-1], response is due 1/15/98. (xc 12.30.97) (mcl)

12/31/97 25 Response by City of Lago Vista, Bart Turek, Frank Miller in opposition to motion to extend time to respond to Defendants' 12(b) (6) motion to dismiss or, in the alternative, Rule 56 motion and brief for summary judgment [21-1] (td) [Entry date 01/02/98]

* * *

1/8/98 27 Order setting hearing on all pending matters for 3:00 on 1/26/98. – (FAXED on 1/8/98) (kc)

1/15/98 28 Objections to and Motion by Gail Atwater, Michael Haas to strike portions of the affidavit of Frank Miller (mcl) [Entry date 01/16/98]

* * *

1/15/98 – RECEIVED, Plaintiffs' Cross-Motion for Partial Summary Judgment and Response to City of Lago Vista Defendants' Motion to dismiss or in the alternative for Summary Judgment (mcl) [Entry date 01/16/98]

* * *

1/16/98 31 Cross motions by Gail Atwater, Michael Haas for partial summary judgment (mcl) [Entry date 01/20/98]

1/16/98 31 Response by Gail Atwater, Michael Haas motion to dismiss [19-1], motion for summary judgment [19-2] (mcl) [Entry date 01/20/98]

* * *

1/26/98	–	RECEIVED, defendants' reply to plaintiff's response to defendants' rule 12(b)(6) motion to dismiss . . . (mcl)
1/26/98	33	Response by City of Lago Vista, Bart Turek, Frank Miller motion to strike portions of the affidavit of Frank Miller [28-1] (mcl)
1/26/98	34	Response by City of Lago Vista, Bart Turek, Frank Miller cross motion for partial summary judgment [31-1] (mcl)
1/26/98	–	Miscellaneous hearing (pending matters) held. Parties announce ready. Statements and arguments of counsel heard. Motion for summary judgment [19-2] granted. Plaintiff has 10 days to file any pleading he desires before final judgment. Written order forthcoming in 10 days. (td) [Entry date 01/27/97]
2/3/98	35	Transcript filed for dates of 1/26/98 (mcl)
2/10/98	36	Motion by Michael Haas for voluntary dismissal with prejudice (td)
2/10/98	37	Order set miscellaneous hearing for 8:30 2/13/98 (faxed 2/10/98) (td)
2/10/98	38	Response by City of Lago Vista, Bart Turek, Frank Miller to motion for voluntary dismissal with prejudice [36-1] (td)
2/10/98	38	Motion by City of Lago Vista, Bart Turek, Frank Miller for entry of judgment (td)
2/13/98	39	Order granting motion to dismiss [19-1], granting motion for summary judgment [19-2] mooting motion for entry of judgment [38-1], mooting motion for voluntary dismissal with prejudice [36-1], mooting motion for leave to file reply in excess of 10 pages [32-1], denying cross motion for partial summary judgment [31-1], mooting motion to strike portions of the affidavit of Frank Miller [28-1] (xc 2.13.98) (mcl)
2/13/98	40	Judgment for City of Lago Vista, Bart Turek, Frank Miller against Gail Atwater, Michael Haas (Pages: 1) IT IS ORDERED that Gail Atwater and Michael Hass [sic], as next friend of Anya Savannah Hass [sic] and Mackinley Xavier Haas take nothing by their causes of action asserted against the City of Lago Vista, Bart Turek, and Frank Miller and that all costs be taxed to the plaintiffs. (xc 2.13.98) (mcl)
2/13/98	–	Case closed (mcl)
2/13/98	41	Motion by Gail Atwater, Michael Haas for reconsideration of oral ruling granting defendants' motion for summary judgment (mcl)
2/18/98	42	Order denying motion for reconsideration of oral ruling granting defendants' motion for summary judgment [41-1] (xc 2.19.98) (mcl) [Entry date 02/19/98]

* * *

3/19/98	48	Notice of appeal by Gail Atwater, Michael Haas (mcl)
3/19/98	–	USCA appeal fees paid for appeal [48-1] : Appeal Fee: $105.00 Receipt # 269558 (mcl)

3/26/98 – Served copy of notice of appeal and transmittal letter to the Fifth Circuit on Pamela McGraw, William Krueger, and Court. (sl)

3/26/98 – Certified and transmitted record on appeal to U.S. Court of Appeals: appeal [48-1] (sl)

Fifth Circuit Court of Appeals

4/3/98 Civil rights case docketed. NOA filed by Appellant Gail Atwater, Appellant Michael Haas. [98-50302] (mcs)

4/3/98 Record on appeal filed. Pleadings: 4 vols. Transcripts: 1 vol. [98-50302] (sep)

4/6/98 Briefing notice issued. [98-50302] A/Pet's Brief due on 5/18/98 for Michael Haas, for Gail Atwater. (sep)

4/20/98 Appearance form filed by Debra Irwin for Appellant Michael Haas, Appellant Gail Atwater, Pamela Ann McGraw for Appellant Michael Haas, Appellant Gail Atwater. [98-50302] (jca)

4/20/98 Appearance form filed by Robert Charles DeCarli for Appellant Michael Haas, Appellant Gail Atwater. [98-50302] (jca)

* * *

5/20/98 Appellant's Brief filed by Appellant Gail Atwater, Appellant Michael Haas. Copies of brief: 7 # of pages: 30. Date of COS: 5/18/98 Sufficient [Y/N]: y. [98-50302] A/Pet's Brief ddl satisfied. E/Res's Brief

due on 6/19/98 for Frank Miller, for Bart Turek, for Lago Vista, City of (jtr)

5/20/98 Record excerpts filed by Appellant Gail Atwater, Appellant Michael Haas # of copies: 4 Sufficient [Y/N]: y. [98-50302] (jtr)

5/21/98 Appearance form filed by Joanna Rae Lippman for Appellee Frank Miller, Appellee Bart Turek, Appellee Lago Vista, City of, William W Krueger for Appellee Frank Miller, Appellee Bart Turek, Appellee Lago Vista, City of. [98-50302] (jca)

* * *

6/22/98 Appellee's Brief filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller. Copies of Brief: 7 # of pages: 28. Date of COS: 6/19/98 Sufficient [Y/N]: Y. [98-50302- E/Res's Brief ddl satisfied. Reply Brief due on 7/6/98 for Michael Haas, for Gail Atwater. (sep)

6/22/98 Record excerpts filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller # of copies: 4 Sufficient [Y/N]: N, excess pages, [98-50302] Sufficient Record Excerpts due on 7/3/98 for Frank Miller, for Bart Turek, for Lago Vista, City of (sep)

7/6/98 Record Excerpts made sufficient by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller [98-50302] Sufficient Record Excerpts ddl satisfied, (sep)

7/7/98 Reply brief filed by Appellant Gail Atwater, Appellant Michael Haas. Copies of

	Brief: 7 # of pages: 15. Date of COS: 7/3/98 Sufficient [Y/N]: Y. [98-50302] Reply Brief ddl satisfied. (sep)
9/8/98	Case tentatively calendared for oral argument Week of: 11/02/98. [98-50302] (gam)
9/18/98	Case calendared for oral argument. [98-50302] (sme)
11/5/98	Oral argument heard. Case argued by Joanna Rae Lippman for Appellee Frank Miller, Appellee Bart Turek, Appellee Lago Vista, City of, Pamela Ann McGraw for Appellant Michael Haas, Appellant Gail Atwater [98-50302] (sme)
11/6/98	Supplemental authorities (FRAP 28(j)) filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller [1107242-1] . [98-50302] (sme)
11/16/98	Letter referencing oral argument of 11/5/98, filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller [1115971-1] [98-50302] (rff)
1/29/99	Opinion filed. If Published # of pages: 10 Issue Mandate due on 2/19/99. [98-50302] (jma)
1/29/99	Judgment entered and filed. [98-50302] (jma)
1/29/99	Costs taxed specifically against the City of Lago Vista and Officer Turek. Copies to counsel. [1178752-1] [98-50302] (jma)
2/11/99	Petition filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller for rehearing. # of copies filed: 4 [1191813-1] [98-50302] (swt)

2/11/99	Petition filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller for rehearing en banc. # of copies filed: 20 [1191823-1] Sufficient Rehearing due on 2/17/99 for Frank Miller, for Bart Turek, for Lago Vista, City of. [98-50302] (swt)
2/12/99	Bill of costs filed by Appellant Gail Atwater, Appellant Michael Haas. [1192942-1] [98-50302] (rff)
2/18/99	Rehearing made sufficient by Appellant Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller [98-50302] Sufficient Rehearing ddl satisfied. (swt)
2/19/99	Record on appeal returned to 5CCA. Volumes: 5 [98-50302] (vlb)
3/26/99	COURT Order filed granting petition for rehearing en banc [1191823-1] with Argument (Y/N)? y Before: All Active Judges and Judge Reynaldo G. Garza. A/Pet Supplemental Brief due on 4/28/99 for Michael Haas, for Gail Atwater. E.Res Supplemental Brief due on 5/28/99 for Frank Miller, for Turek, for Lago Vista, City of; mooting petition for rehearing [1191813-1] Copies to all counsel. [98-50302] (gam)
3/26/99	Case reopened. [98-50302] (gam)
3/26/99	Case tentatively calendared for en banc oral argument Week of: 09/20/99. [98-50302] (gam)
4/1/99	Record on appeal returned to 5CCA. Volumes: 5 [98-50302] (swt)

4/29/99	Supplemental brief filed by Appellant Gail Atwater, Appellant Michael Haas. Copies of Brief: 20 # of pages: 24. Word count: 5282 Disk Provided [Y/N]: y Date of COS: 4/28/99 [98-50302] A/Pet Supplemental Brief ddl satisfied. (hjg)
6/1/99	Supplemental brief filed by Appellee Lago Vista, City of, Appellee Bart Turek, Appellee Frank Miller, Copies of Brief: 20 # of pages: 17. Word count: 4038 Dist Provided [Y/N]: n Date of COS: 5/28/99 [98-50302] E/Res Supplemental Brief ddl satisfied. (hjg)
6/7/99	Motion filed by Texas Municipal League and Texas City Attorneys Association to file amicus brief [1303104-1] Excess Pages? (Y/N) n [98-50302] (rff)
6/7/99	Motion filed by Texas Police Chiefs Association to file amicus brief [1303107-1] Excess Pages? (Y/N) n [98-50302] (rff)
6/11/99	Response/opposition filed by Appellant Gail Atwater, Appellant Michael Haas to motion to file amicus brief [1303104-1], motion to file amicus brief [1303107-1] Excess Pages? (Y/N) n [1305938-1] [98-50302] (rff)
6/16/99	Reply filed by Not Party TX Muni Leag, Not Party TX City Atty Assn to response/opposition [1305938-1] Excess Pages? (Y/N) n [1310917-1] [98-50302] (rff)
6/18/99	COURT Order filed granting the motion of Texas Municipal League and Texas City Attorneys Association to file an amicus brief [1303104-1], granting the motion of the Texas Police Association to file an amicus brief [1303107-1] (CDK) Copies to all counsel. [98-50302] (mcs)
6/18/99	Amicus curiae brief filed by Amicus Curiae TX Muni Leag, Amicus Curiae TX City Atty Assn. Consent included in brief? [Y/NA] NA Copies of Brief: 7 # of pages: 8 Date of COS: 6/4/99 Sufficient [Y/N]: n No appearance form. [98-50302] Sufficient Brief due on 6/28/99 for TX City Atty Assn, for TX Muni Leag. (hjg)
6/18/99	Amicus curiae brief filed by Amicus Curiae TX Police Chiefs. Consent included in brief? [Y/NA] NA Copies of Brief: 7 # of pages: 12 Date of COS: 6/4/99 Sufficient [Y/N]: n Wrong color cover, No appearance form. [98-50302] Sufficient Brief due on 6/28/99 for TX Police Chiefs. (hjg)
6/30/99	Appearance form filed by Monte Akers for Amicus Curiae TX City Atty Assn, Amicus Curiae TX Muni Leag. [98-50302] Sufficient Brief ddl satisfied. (swt)
7/15/99	Appearance form filed by James McLaughlin for Amicus Curiae TX Police Chiefs. [98-50302] Sufficient Brief ddl satisfied. (swt)
7/15/99	Brief made sufficient by Amicus Curiae TX Police Chiefs (appearance form received) Replacement Disk Provided [Y/N]: n [98-50302] (swt)
9/22/99	Oral argument heard En Banc. Case argued by Robert Charles DeCarli for Appellant Michael Haas, Appellant Gail Atwater, William W Krueger for Appellee Frank Miller, Appellee Bart Turek, Appellee Lago Vista, City of [98-50302] (vlb)

11/24/99	Opinion filed. If Published # of pages: 4 Issue Mandate due on 12/15/99. [98-50302] (jma)
11/24/99	Judgment entered and filed. [98-50302] (jma)
12/16/99	Mandate issued. Approved BOC Issued [Y/N]?: Y [98-50302] Issue Mandate ddl satisfied. (sds)
1/3/00	Record on appeal returned to 5CCA. Volumes: 5 [98-50302] (jca)
1/3/00	Record on appeal returned to USDC. Volumes: 5. [98-50302] (jca)
2/29/00	Supreme Court notice that petition for certiorari was filed on 02/22/00 by Appellant Gail Atwater and Appellant Michael Haas. Supct No.: 99-1408 [98-50302] (cav)
6/30/00	Supreme Court order received granting petition certiorari [1555313-1] by Appellant Gail Atwater, Michael Haas on 6/26/00. [98-50302] (ksw)
8/30/00	Record on appeal requested from the district court for the Supreme Court [98-50302] . (ksw)
8/30/00	Certified record on appeal transmitted to United States Supreme Court. 5th Cir. Volumes: 2 [98-50302] (ksw)

CAUSE NO. 97-09063

GAIL ATWATER, INDIVIDUALLY, and MICHAEL HAAS, M.D., as Next Friend of Anya Savannah Haas and Mackinley Xavier Haas, Plaintiffs,	§	**IN THE DISTRICT COURT**
	§	**98th JUDICIAL DISTRICT**
v.	§	**TRAVIS COUNTY, TEXAS**
THE CITY OF LAGO VISTA, BART TUREK; and FRANK MILLER, Defendants	§	

§§§

I.

PARTIES

1. Named Plaintiffs GAIL ATWATER and MICHAEL HAAS are individuals residing in Lago Vista, Travis County, Texas; Plaintiffs are husband and wife, their minor children, actual parties in interest, are ANYA SAVANNAH HAAS, now age 6, and MACKINLEY XAVIER HAAS, now age 4; Plaintiff MICHAEL HAAS is qualified to serve and is not disqualified from serving as Next Friend of his minor children.

2. Defendant THE CITY OF LAGO VISTA is a municipality located [sic] Travis County, Texas, and may be served with process by serving the current mayor, Glen Hartman, at 5803 Thunderbird, Lago Vista, Travis County, Texas 78645.

3. Defendant BART TUREK is, and at all times mentioned was, a resident of the City of Lago Vista, Travis County, Texas. At all times relevant to this action, Defendant BART TUREK was a duly appointed and acting Police Officer appointed by The City of Lago Vista Police Department. Defendant BART TUREK may be served with process at The City of Lago Vista Police Department, 7207 Bar K Ranch Road, Lago Vista, Travis County, Texas 78645.

4. Defendant FRANK MILLER was, at all times relevant to this action, the Chief of Police for the City of Lago Vista Police Department. FRANK MILLER may be served with process at The City of Lago Vista Police Department, 7207 Bar K Ranch Road, Lago Vista, Travis County, Texas 78645.

5. The City of Lago Vista has actual notice, pursuant to all relevant statutes.

II.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the controversy because it is within the jurisdictional limits of this Court.

7. This Court has jurisdiction over the Defendants in this matter because all defendants are residents of the State of Texas.

8. Venue is proper in Travis County because the [sic] all defendants either currently reside in Travis County, or resided in Travis County at the time the causes of action accrued, and because all of the events giving rise to the Plaintiffs' allegations occurred in Travis County.

III.

CLASS ALLEGATIONS

9. This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Texas Rule of Civil Procedure 42 (a) and Texas Rule of Civil Procedure 42 (b)(4).

10. The class so represented by Plaintiffs in this action, and of which Plaintiffs are members, consists of persons who have been subjected to detainment without probable cause, false arrests, false imprisonments, malicious prosecution, and/or excessive use of force, by police officers employed by the City of Lago Vista Police Department,

who, at all times relevant to this action, were acting under color of law, or as a result of a municipal policy, or as a result of custom and/or usage of such policy.

11. The exact number of class members, here identified and described, is not known, but it is estimated that there are no less than 500. The class is so numerous that joinder of individual members is impractical. Plaintiffs allege and will show that many people who live in or visit Lago Vista live in fear and distrust of the Lago Vista Police Department.

12. There are common questions of law and fact in the action that relate to affect the rights of each member of the class, and the relief sought is common to the entire class. The common questions of law and fact pertain to arrest, detainment and/or seizure of individuals without probable cause or exigent circumstances, unlawful search and seizure, false arrest, false imprisonment, malicious prosecution, and/or excessive use of force, by one or more police officers employed by the City of Lago Vista Police Department and supervised by either the current or former Chief of Police and by other officials and agents of the City of Lago Vista, including but not limited to the mayor, the city attorney, and the city manager. At all times relevant to this action, the police officers were acting under color of law, or as a result of a municipal policy, or as a result of custom and/or usage of such policy.

13. The claims of Plaintiffs, who are representatives of the class here, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiffs, depend on the showing of the acts or omissions of

Defendants giving rise to the right of Plaintiffs to the relief sought herein. The named Plaintiffs do not know and are unaware of any conflict between themselves and other members of the class designated with respect to this action, or with respect to the claims for relief set forth herein.

14. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

15. The named Plaintiffs are the representative parties for the class, and are able to, and will, fairly and adequately protect the interests of the class. Charles Edward Lincoln, attorney for Plaintiffs, has experience in and knowledge of the field of civil rights litigation, both as a judicial law clerk in the United States District Court for the Southern District of Florida, as an extern for the United States Court of Appeals for the Ninth Circuit, and as an associate of other law firms. Charles Edward Lincoln will actively conduct and be responsible for Plaintiffs' case here.

IV.

ALTERNATIVE CLASS ALLEGATIONS

16. This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Texas Rule of Civil Procedure 42 (a) and Texas Rule of Civil Procedure 42 (b)(4).

17. The class so represented by Plaintiffs in this action, and of which Plaintiffs are members, consists of persons who have been subjected to detainment without probable cause, false arrests, false imprisonments, malicious prosecution, and/or excessive use of force, by Defendant BART TUREK and other police officers employed by the City of Lago Vista Police Department, who, at all times relevant to this action, were acting under color of law, or as a result of a municipal policy, or as a result of custom and/or usage of such policy.

18. The exact number of class members, here identified and described, is not known, but it is estimated that there are not less than 100, and there may be as many as 500. The class is so numerous that joinder of individual members is impractical. Plaintiffs allege and will show that many people who live in or visit Lago Vista live in fear and distrust of the Lago Vista Police Department.

19. There are common questions of law and fact in the action that relate to affect the rights of each member of the class, and the relief sought is common to the entire class. The common questions of law and fact pertain to the employment of violent, emotionally unstable, and psychologically imbalanced individuals as police officers, who commit false arrests, detainments and/or seizures of individuals without probable cause or exigent circumstances, unlawful search and seizure, false arrest, false imprisonment, malicious prosecution, and/or excessive use of force. Defendant BART TUREK appears to be the single police officer employed by the City of Lago Vista Police Department who has harmed the greatest number of individuals, according to present information and belief. Nonetheless, the police department as a whole

supervised by either the current or former Chief of Police and by other officials and agents of the City of Lago Vista, including but not limited to Defendant FRANK MILLER (police chief) the mayor, the city attorney, and the city manager, have all fostered and encouraged and condoned behavior such as BART TUREK's as a matter of municipal policy. At all times relevant to this action, BART TUREK and the other LAGO VISTA police officers complained of were acting under color of law, or as a result of a municipal policy, or as a result of custom and/or usage of such policy.

20. The claims of Plaintiffs, who are representatives of the class here, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiffs, depend on the showing of the acts or omissions of Defendants giving rise to the right of Plaintiffs to the relief sought herein. The named Plaintiffs do not know and are unaware of any conflict between themselves and other members of the class designated with respect to this action, or with respect to the claims for relief set forth herein.

21. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, in that the plaintiffs in this class desire reform in the police department and that the offending officers and the Police Chief be disciplined and dismissed. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that all plaintiffs can be heard together, and it will be easier through this mechanism to

locate all who have been affected by the City's intentional policies and gross negligence.

22. The named Plaintiffs are representative parties for the class, and are able to, and will, fairly and adequately protect the interests of the class. Charles Edward Lincoln, attorney for Plaintiffs, has experience in and knowledge of the field of civil rights litigation, both as a judicial law clerk in the United States District Court for the Southern District of Florida, as an extern for the United States Court of Appeals for the Ninth Circuit, and as an associate of other law firms. Charles Edward Lincoln will actively conduct and be responsible for Plaintiffs' case here.

V.

FACTS OF NAMED PLAINTIFFS' CLAIM WHICH MAY BE TYPICAL OF CLASS MEMBERS

23. On or about March 26, 1997, Plaintiff GAIL ATWATER, accompanied by her two minor children, ANYA SAVANNA HAAS AND MACKINLEY XAVIER HAAS, was driving on the public streets of the City of Lago Vista, when Defendant BART TUREK stopped her for not having her children properly seatbelted in the vehicle.

24. As Defendant BART TUREK approached Plaintiff GAIL ATWATER's car, he began yelling at her, using words to the effect, "We've met before!" He then proceeded to stick his finger in her face and state "You're going to jail!" Plaintiff GAIL ATWATER's first words to Defendant BART TUREK were "Please don't yell," as his rude approach and loud, abusive voice were frightening her children, at that time aged 5 and 3.

25. Defendant BART TUREK called for back up, and then asked for Plaintiff GAIL ATWATER'S driver's license and insurance information. As Plaintiff's purse had been stolen the day before, she told Defendant BART TUREK that she did not have them with her. Defendant BART TUREK only laughed at her, using words to the effect of "I've only heard that story two-hundred times."

26. Because her children were frightened, upset and crying, Plaintiff GAIL ATWATER asked Defendant BART TUREK if she could take her kids to her friend's home, which was approximately two houses from where Defendant BART TUREK stopped her. Defendant BART TUREK replied, "You're not going anywhere. You don't care about these kids or you would have had them in seatbelts!" By this time, Plaintiff GAIL ATWATER'S friend, who had been alerted to the situation by bystanders, walked up and took the children to her house.

27. At this point, Defendant BART TUREK continued to yell at and browbeat Plaintiff GAIL ATWATER, by making statements such as "You just had to get these kids in a car and go somewhere, didn't you! You couldn't walk! Why didn't you get your girlfriend to come get you?! You're going to jail!" He then handcuffed Plaintiff GAIL ATWATER and took her to jail, where she spent approximately one hour. Plaintiff GAIL ATWATER'S vehicle, which was parked only two houses from her friend's house, was towed to Cedar Park. At no time was Plaintiff GAIL ATWATER informed that she was under arrest, nor did Defendant BART TUREK inform Plaintiff GAIL ATWATER of her "Miranda" rights. Plaintiff's person was thus unreasonably and unlawfully seized, in violation of the Fourth and Fifth Amendments to the United States

Constitution, incorporated to the States by the Fourteenth Amendment to the United States Constitution. The Defendants seized Plaintiff without due process or probable cause, also in violation of the Fifth and Fourteenth Amendments.

VI.

FIRST CAUSE OF ACTION: DEPRIVATION OF CONSTITUTIONAL RIGHTS

28. Paragraphs (1)-(27) of this First Amended Petition are incorporated by reference into this section as if fully set forth herein.

29. Plaintiff GAIL ATWATER, individually, and Plaintiff MICHAEL HAAS, M.D., as Next Friend his minor children ANYA SAVANNAH HAAS and MICHAEL XAVIER HAAS, do hereby sue and bring this action on behalf of themselves and others similarly situated against Defendants THE CITY OF LAGO VISTA, BART TUREK, and FRANK MILLER for deprivation of constitutional rights within the meaning of 42 U.S.C. §1983.

30. At all relevant times, Defendants BART TUREK and FRANK MILLER were the agents, servants, and/or employees of Defendant THE CITY OF LAGO VISTA. At all relevant times, Defendant FRANK MILLER supervised Defendant BART TUREK as part of his duties as Police Chief of the City of Lago Vista Police Department.

31. The above-described actions subjected Plaintiffs to a deprivation of rights, privileges and immunities secured to Plaintiffs by the Constitution and/or laws of the United States, including the due process clause of the

Fifth and Fourteenth Amendment to the Constitution of the United States, within the meaning of 42 U.S.C. §1983, and the right to be free from unreasonable seizure provided by the Fourth Amendment, incorporated to the States by the Fourteenth Amendment.

32. As a direct and proximate result of the above-mentioned unconstitutional acts of Defendants THE CITY OF LAGO VISTA, BART TUREK, and FRANK MILLER, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, sustained emotional and psychological injuries, as well as loss of time, inconvenience, the cost of towing her vehicle, and other costs and damages. In all likelihood, as a direct and proximate result of the above described actions of these Defendants, Plaintiffs will continue to suffer emotional distress and mental anguish well into the future.

VII.

SECOND CAUSE OF ACTION: EXCESSIVE USE OF FORCE

33. Paragraphs (1)-(32) of this First Amended Petition are hereby realleged and incorporated by reference as if fully copied and set forth herein.

34. Plaintiff GAIL ATWATER, individually, and Plaintiff MICHAEL HAAS, M.D., as Next Friend of his minor children ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS, on behalf of themselves and of all Plaintiffs similarly situated, do hereby sue and bring this cause of action against Defendants THE CITY OF LAGO VISTA, BART TUREK, and FRANK MILLER for deprivation of

constitutional rights within the meaning of 42 U.S.C. §1983.

35. As described in detail above, Defendant BART TUREK used excessive force in arresting Plaintiff GAIL ATWATER during the course of a routine traffic stop. Such force was in no manner or way necessary to conduct this traffic stop or to restrain Plaintiff GAIL ATWATER, nor were there any other exigent or extenuating circumstances.

36. At all times relevant to the incident in question, Defendant BART TUREK was acting within the course and scope of his employment and authority as a police officer for Defendant THE CITY OF LAGO VISTA.

37. Defendant's actions, as describe [sic] above, deprived Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, and MACKINLEY XAVIER HAAS, of equal protection of the law, and other rights, privileges and immunities protected by the United States Constitution and/or other laws. As such, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, and MACKINLEY XAVIER HAAS, are entitled to recover their actual, consequential, and special damages from Defendants BART TUREK and the CITY OF LAGO VISTA, pursuant to 42 U.S.C. §1983, 42 U.S.C. §1985, and 42 U.S.C. §1988.

38. Additionally, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, are entitled to recover against Defendants BART TUREK and THE CITY OF LAGO VISTA pursuant to the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, §101.001 et seq.

39. In committing the acts alleged above, Defendant BART TUREK either acted intentionally, recklessly, wantonly and/or with malice toward Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, thus entitling Plaintiffs to an award of exemplary damages. Defendant BART TUREK's actions were not the result of mere momentary thoughtlessness or inattention, but constituted that kind of conduct for which the law provides punishment.

VIII.

THIRD CAUSE OF ACTION: FALSE IMPRISONMENT

40. Paragraphs (1)-(39) of this First Amended Petition are hereby realleged and incorporated by reference as if fully copied and set forth herein.

41. Plaintiff GAIL ATWATER, individually, and Plaintiff MICHAEL HAAS, M.D., as Next Friend of his minor children ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS, on their own behalf and on behalf of all persons similarly situated, do hereby sue and bring this cause of action against Defendants THE CITY OF LAGO VISTA, BART TUREK, and FRANK MILLER for deprivation of constitutional rights within the meaning of 42 U.S.C. §1983.

42. As described in detail above, Defendant BART TUREK stopped Plaintiff GAIL ATWATER for not having her children properly restrained in the car, and then proceeded to wrongfully seize her, without reading her the required Miranda warnings, for the traffic violation. Although Plaintiff GAIL ATWATER was never told she

was under arrest, Defendant BART TUREK placed her under restraint by physical force and show of authority, thus completely restricting her freedom of movement. At no time during this wrongful seizure was Plaintiff GAIL ATWATER free to leave, or even to make adequate provisions to take care of her children. At no time in question did Plaintiff GAIL ATWATER commit an offense justifying an arrest.

43. At all relevant times, Defendants BART TUREK and FRANK MILLER were the agents, servants, and/or employees of Defendant THE CITY OF LAGO VISTA. At all relevant times, Defendant FRANK MILLER supervised Defendant BART TUREK as part of his duties as Police Chief of the City of Lago Vista Police Department.

44. The facts alleged above were committed under the direction of Defendants FRANK MILLER and THE CITY OF LAGO VISTA, with the knowledge and consent of these Defendants, as part of a pattern and practice of these Defendants pursuant to municipal policy, and/or were thereafter approved and ratified by these Defendants.

45. The above-described actions subjected Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, to a deprivation of rights, privileges and immunities secured to Plaintiff by the Constitution and/or laws of the United States, including the right to be free from unreasonable seizure and the rights provided by the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States, within the meaning of 42 U.S.C. §1983.

46. As a direct and proximate result of the above-mentioned illegal and unconstitutional acts of Defendants THE CITY OF LAGO VISTA, BART TUREK, and FRANK MILLER, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS sustained emotional and psychological injuries, as well as loss of time, inconvenience, the costs of retrieving her wrongfully towed car, and other costs and damages. In all likelihood, as a direct and proximate result of the above described actions of these Defendants, Plaintiff will continue to suffer mental anguish well into the future.

IX.

FOURTH CAUSE OF ACTION: INADEQUATE TRAINING

47. Paragraphs (1)-(46) of this First Amended Petition are hereby realleged and incorporated by reference as if fully copied and set forth herein.

48. This Cause of Action is brought by Plaintiffs GAIL ATWATER, individually, and MICHAEL HAAS, M.D., as Next Friend of his minor children ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS, on their own behalf and on behalf of all persons similarly situated, against Defendants THE CITY OF LAGO VISTA and FRANK MILLER for deprivation of constitutional rights within the meaning of 42 U.S.C. §1983. Additionally, Plaintiffs bring this cause of action pursuant to the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, §101.001 et. seq.

49. At all times relevant to this complaint, Defendants THE CITY OF LAGO VISTA and FRANK MILLER had a

duty properly to train and instruct the police officers working for The City of Lago Vista Police Department. Defendants THE CITY OF LAGO VISTA'S and FRANK MILLER'S actions in failing properly to train these officers, including Defendant BART TUREK, constitute negligence and/or gross negligence. As a result, Defendants THE CITY OF LAGO VISTA and FRANK MILLER directly and proximately caused the injuries to Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS.

50. The above-described actions subjected Plaintiffs to a deprivation of rights, privileges and immunities secured to Plaintiffs by the Constitution and/or laws of the United States, including the right to be free from unreasonable seizure secured by the Fourth Amendment and the rights provided by the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, within the meaning of 42 U.S.C. §1983.

51. As a direct and proximate result of the above-mentioned unconstitutional acts of Defendants THE CITY OF LAGO VISTA and FRANK MILLER, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, sustained emotional and psychological injuries, as well as loss of time, inconvenience, the costs of wrongfully towing her car, and other and further costs and damages. In all likelihood, as a direct and proximate result of the above described actions of these Defendants, Plaintiffs will continue to suffer mental anguish well into the future.

X.

FIFTH CAUSE OF ACTION: FAILURE TO SUPERVISE

52. Paragraphs (1)-(51) are hereby realleged and incorporated by reference as if fully copied and set forth herein.

53. This Cause of Action is brought by Plaintiff GAIL ATWATER, individually, and MICHAEL HAAS, M.D., as Next Friend of his minor children ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS, on behalf of themselves and of all persons similarly situated, against Defendants THE CITY OF LAGO VISTA and FRANK MILLER for deprivation of constitutional rights within the meaning of 42 U.S.C. §1983. Additionally, Plaintiffs bring this cause of action pursuant to the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, §101.001 et. seq.

54. At all times relevant to this Complaint, Defendant FRANK MILLER was responsible for supervising Defendant BART TUREK. Furthermore, at all times relevant to this complaint, Defendant FRANK MILLER acted as the agent, servant, or employee of Defendant THE CITY OF LAGO VISTA.

55. Defendant FRANK MILLER had a duty, as Chief of Police, properly to supervise the police officers working for The City of Lago Vista Police Department, including Defendant BART TUREK, to prevent the police officers from violating the constitutional rights of the citizens of Lago Vista.

56. Defendant FRANK MILLER was negligent and/or grossly negligent in fulfilling his duty to properly supervise the police officers of the City of Lago Vista Police Department, including Defendant BART TUREK. Said negligence and gross negligence constituted a pattern or practice on the part of Defendant FRANK MILLER.

57. Defendant THE CITY OF LAGO VISTA, although aware of Defendant FRANK MILLER'S improper supervision of the police officers under his command, failed to take any corrective action. Said actions by Defendant THE CITY OF LAGO VISTA constitute negligence and gross negligence.

58. The above-described actions subjected Plaintiffs to a deprivation of rights, privileges and immunities secured to Plaintiffs by the Constitution and/or laws of the United States, including the right to be free from unreasonable seizure secured by the Fourth Amendment and the rights secured by the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, within the meaning of 42 U.S.C. §1983.

59. As a direct and proximate result of the above-mentioned unconstitutional acts of Defendants THE CITY OF LAGO VISTA and FRANK MILLER, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, sustained emotional and psychological injuries, as well as loss of time and inconvenience, the costs of retrieving her wrongfully towed automobile, and other and further costs and damages. In all likelihood, as a direct and proximate result of the above described actions of these Defendants, Plaintiffs will continue to suffer mental anguish well into the future.

XI.

SIXTH CAUSE OF ACTION: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

60. Paragraphs (1)-(59) above are incorporated by reference as if fully set forth herein.

61. This Cause of Action is brought by Plaintiff' GAIL ATWATER, INDIVIDUALLY, AND MICHAEL HAAS, M.D., AS NEXT FRIEND OF ANYA SAVANNAH HAAS AND MACKINLEY XAVIER HAAS, on behalf of themselves and of all persons similarly situated, against the Defendants CITY OF LAGO VISTA, BART TUREK, and FRANK MILLER, for intentional infliction of emotional distress pursuant to the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, §101.001 et. seq., and the common law of the State of Texas.

62. At all relevant times, Defendants BART TUREK and FRANK MILLER were the agents, servants, and/or employees of Defendant THE CITY OF LAGO VISTA. At all relevant times, Defendant FRANK MILLER supervised Defendant BART TUREK as part of his duties as Police Chief of the City of Lago Vista Police Department.

63. Defendant BART TUREK acted intentionally or recklessly by harassing, humiliating, browbeating, handcuffing, and improperly forcing Plaintiff GAIL ATWATER to go to the Lago Vista Police Station, and by violating Plaintiff GAIL ATWATER'S civil rights as discussed above. Furthermore, he terrorized her children ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS by unjustly and unreasonably screaming at their mother in front of them, all the while knowing how much this upset the children; suggesting, in front of the children, that

their mother did not care about them; and threatening to take their mother to jail in front of them. He additionally traumatized them by not allowing Plaintiff GAIL ATWATER to remove her children from this frightening situation when she reasonably asked if she could do so. Said conduct was extreme and outrageous, especially for officers sworn to uphold the law and protect the citizens of this State, and should be regarded as atrocious and utterly intolerable in a civilized community. His actions directly and proximately caused Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, to suffer severe emotional distress, for which they are entitled to recover damages.

64. Defendants THE CITY OF LAGO VISTA and FRANK MILLER acted intentionally or recklessly in the manner in which they supervised and/or trained their police officers, including Defendant BART TUREK. These Defendants knew of and/or condoned the reprehensible acts committed by several police officers employed by The City of Lago Vista Police Department, including Defendant BART TUREK, and yet they did nothing to stop it. In fact, their actions only encouraged the officers to violate more constitutional rights of the citizens of Lago Vista, all in the name of upholding the law. Said conduct is extreme and outrageous, and utterly intolerable in a civilized community. The actions of these Defendants directly and proximately caused Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, to suffer severe emotional distress, for which they are entitled to recover damages.

XII.

SEVENTH CAUSE OF ACTION: ASSAULT & BATTERY

65. Paragraphs (1)-(64) are hereby incorporated by reference as if fully set forth herein.

66. This cause of action is brought by Plaintiff GAIL ATWATER, INDIVIDUALLY, and MICHAEL HAAS, M.D., AS NEXT FRIEND OF ANYA SAVANNAH HAAS AND MACKINLEY XAVIER HAAS, on behalf of themselves and of all persons similarly situated, against Defendants BART TUREK AND THE CITY OF LAGO VISTA.

67. On or about March 26, 1997, Defendant BART TUREK, an agent, employee, and/or servant of Defendant THE CITY OF LAGO VISTA, intentionally or knowingly threatened to cause and in fact caused physical contact between himself and Plaintiff GAIL ATWATER by touching her or laying his hands upon her for the purpose of depriving her of her freedom of movement, pretending at all times as if he, BART TUREK, were acting to uphold the law. Defendant BART TUREK knew, or reasonably should have known, that no emergency or exigent circumstances justified his conduct, in that Plaintiff GAIL ATWATER at no time posed any threat to BART TUREK's person, or to the peace and public order of LAGO VISTA. Defendant BART TUREK further knew that such touching and/or physical contact would be offensive to Plaintiff GAIL ATWATER, in addition to the injuries caused by the handcuffing and deprivation of freedom of movement, as described above (See "False

Imprisonment," Third Cause of Action, *supra*). Furthermore, Defendant BART TUREK knew or should have known that said offensive contact would be extremely upsetting to the minor children, Plaintiffs ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS, who at the time were 5 and 3 years old, respectively.

68. At all times relevant to this incident, Defendant BART TUREK was acting under color of law, and in the curse and scope of his employment as a police officer for Defendant THE CITY OF LAGO VISTA.

69. As a direct and proximate result of this assault by Defendant BART TUREK, Plaintiff GAIL ATWATER was humiliated and in front of her children and members of her community, and was unwarrantedly subjected to the extreme embarrassment and humiliation of being seized and taken to jail. Furthermore, Plaintiffs ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS were severely traumatized by watching Defendant BART TUREK assault and falsely arrest and imprison their mother.

70. Plaintiff' GAIL ATWATER, as well as Plaintiffs ANYA SAVANNAH HAAS, and MACKINLEY XAVIER HAAS, minor children represented here by their father and Next Friend MICHAEL HAAS, M.D., are entitled to recover damages from Defendants BART TUREK AND THE CITY OF LAGO VISTA for the emotional and psychological injuries they sustained as a direct and proximate result of this assault and battery.

71. Defendants' actions, as described above, deprived Plaintiffs GAIL ATWATER and her minor children ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS,

represented by their father and Next Friend MICHAEL HAAS, M.D., of the equal protection of the law, and other rights, privileges and immunities protected by the United States Constitution and/or other laws. As such, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS are entitled to recover damages against Defendants BART TUREK AND THE CITY OF LAGO VISTA, pursuant to 42 U.S.C. §§1983, 1985, and 1988.

72. Additionally, Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS are entitled to recover damages against Defendants BART TUREK AND THE CITY OF LAGO VISTA pursuant to the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, §§101.001 et. seq.

73. In committing the acts described above, Defendant BART TUREK acted intentionally, recklessly, wantonly, and/or with malice toward Plaintiffs GAIL ATWATER, ANYA SAVANNAH HAAS, AND MACKINLEY XAVIER HAAS, thus entitling Plaintiffs to an award of exemplary damages.

XIII.

EIGHTH CAUSE OF ACTION: GROSSLY NEGLIGENT HIRING AND RETENTION OF BART TUREK

74. Plaintiffs reallege paragraphs (1)-(73) as if fully set forth and copied herein.

75. Plaintiff GAIL ATWATER, individually, and Plaintiff MICHAEL HAAS, as Next Friend of his minor children

ANYA SAVANNAH HAAS and MACKINLEY XAVIER HAAS, on behalf of themselves and all persons similarly situated, do hereby sue and bring this cause of action against the CITY OF LAGO VISTA and FRANK MILLER for the grossly negligent hiring and retention of Defendant BART TUREK.

76. Plaintiffs will show that so many complaints have been lodged against BART TUREK that his incompetence and unsuitability to serve in the Lago Vista Police Department were actually known or should in the exercise of minimal diligence have been well-known to the Defendants CITY OF LAGO VISTA and FRANK MILLER.

77. Plaintiffs will show that, in a June 19, 1997 newspaper article quoting the Defendants or their agents herein, concerning the Defendants' handling of the events described above which gave rise to this lawsuit, Defendants MILLER and CITY OF LAGO VISTA referred to the Defendant BART TUREK as one of "the finest young officers I have seen in my entire career."

78. The attitude and policy of Defendants CITY OF LAGO VISTA and FRANK MILLER evinces no mere inattention or momentary thoughtlessness, but a purposeful disregard of the rights and dignity of the residents of Lago Vista and the citizens of the State of Texas. In sum the behavior of Defendants is that kind of wilful and grossly negligent conduct for which the law of the State of Texas allows punitive and exemplary damages.

79. A municipality and police department of reasonable prudence would not have hired or retained Defendant BART TUREK.

80. As a direct and proximate result of the negligent hiring and retention of Defendant BAR [sic] TUREK by Defendants CITY OF LAGO VISTA and FRANK MILLER, Plaintiffs, including all class members have suffered actual, consequential, and special damages in excess of the minimum jurisdictional limits of this Court.

XIV.

NINTH CAUSE OF ACTION: CONSPIRACY TO FORMULATE AND ENFORCE A MUNICIPAL POLICY TO VIOLATE CONSTITUTIONAL RIGHTS

81. Plaintiffs reallege each and every, all and singular, of the facts stated heretofore in paragraphs (1)-(80) above as if the same were fully copied and restated herein.

82. Plaintiffs allege that Defendants CITY OF LAGO VISTA and FRANK MILLER did agree among themselves and, with a meeting of the minds and a joint purpose, conspire to institute and maintain a municipal policy of police abuse in general disregard and derogation of the rights guaranteed to the people of the United States by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1983.

83. Plaintiffs allege that Defendants CITY OF LAGO VISTA and FRANK MILLER employed Defendant BART TUREK as a willing agent and instrument of this municipal policy.

84. Plaintiffs allege and will show that the CITY OF LAGO VISTA and FRANK MILLER further conspired with each other to disguise and cover up their policy by

making, by and through their agents, such as that made by a certain city attorney BARNEY KNIGHT, that "losses from traffic outweigh those of crime."

85. Plaintiffs allege and will show that many individuals in Lago Vista live in fear and distrust of the Defendants CITY OF LAGO VISTA and its police department under Defendant Chief FRANK MILLER.

86. Plaintiffs allege and will show that they, individually, and all persons similarly situated have suffered and continue to suffer actual, consequential, and special damages from the municipal policy of the Defendants CITY OF LAGO VISTA and FRANK MILLER, in excess of the minimum jurisdictional limits of this Court.

87. The conduct of the CITY OF LAGO VISTA and FRANK MILLER, in this connection, is the kind of wilfull [sic] and intentional conduct for which the law of the State of Texas provides punitive and/or exemplary conduct to punish such conduct as the conspiracy herein alleged, and to deter such conduct in the future.

XV.

TENTH CAUSE OF ACTION: COMMON FUND

88. Plaintiffs reallege each and every, all and singular, of the facts stated heretofore in paragraphs (1)-(87) above as if the same were fully copied and restated herein.

89. Plaintiffs, by filing this their First Amended Petition against the Defendants CITY OF LAGO VISTA, FRANK MILLER, and BART TUREK, seek to create a common fund or common resource for the benefit of all victims of civil rights abuse and illegal activities by the Lago Vista

Police Department. This would include victims of police abuse, harassment, mistreatment, false arrest, false imprisonment, and/or use of excessive or unreasonable force, and all other persons situated similarly to the Plaintiffs.

90. Plaintiffs allege and will show that the CITY OF LAGO VISTA, FRANK MILLER, and BART TUREK have each individually and in concert with one another acted in with malice and in bad faith towards all victims of police abuse and harassment. Furthermore, these defendants lack just cause in the treatment of the citizens and visitors to Lago Vista in the first place, and it would be equitable, fair, and just to grant to Plaintiffs their attorney's fees in this matter incurred.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs move, request, and pray, for themselves and all other members of the class, that Defendants be cited to appear and answer, that as a preliminary matter the class of persons deprived by the Lago Vista Police Department of their constitutional rights under color of law be certified for purposes of bringing this class action, that a common fund be created for all victims of police abuse in Lago Vista, Texas, and that on final trial, Plaintiffs have the following:

1. Judgment against Defendants for actual damages and consequential damages in an amount in excess of the minimum jurisdictional limits of this Court;

2. Special damages;

3. Exemplary damages in an amount sufficient to punish Defendants and to deter such misconduct in the future;

4. Further damages by reason of Defendants' knowing and willful misconduct;

5. Prejudgment interest and postjudgment interest as provided by law;

6. Attorney's fees;

7. Costs of suit;

8. An order determining how damages are to be distributed among class members; and

9. **All such other and further relief, at law or in equity, to which Plaintiffs may show themselves to be justly entitled.**

RESPECTFULLY SUBMITTED,

DATE SUBMITTED:
September 3, 1997

/s/ Charles Edward Lincoln
Charles Edward Lincoln
State Bar No. 00791116
P.O. Box 4340
Lago Vista, Texas 78645

Attorney for Names Plaintiffs and Class Representatives GAIL ATWATER and MICHAEL HAAS, AND FOR ALL OTHER ALL [sic] CLASS MEMBERS

AUSTIN: (512) 267-4500
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DALLAS: (214) 526-0014
FAX: (214) 521-4004

No. 97-09063

GAIL ATWATER, Individually; and MICHAEL HAAS, M.D., As Next Friend Of Anya Savannah Haas and Mackinley Xavier Haas	§	**IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS**
vs.	§	**98th JUDICIAL DISTRICT**
THE CITY OF LAGO VISTA; BART TUREK; and FRANK MILLER	§	

SPECIAL EXCEPTIONS AND ORIGINAL ANSWER OF DEFENDANTS THE CITY OF LAGO VISTA BART TUREK AND FRANK MILLER

(Filed Sept. 8, 1997)

TO THE HONORABLE JUDGE OF SAID COURT:

THE CITY OF LAGO VISTA ("Defendant City"), BART TUREK (Defendant "Turek") and FRANK MILLER ("Defendant Miller") make and file their Special Exceptions And Original Answer To Plaintiffs' Original Petition, and would respectfully show unto the Court the following:

SPECIAL EXCEPTIONS

I.

Defendant City excepts and objects to Plaintiffs' Original Petition and any and all causes of action therein in their entirety because they fail to state a proper cause of action for which recovery is warranted. Defendant City is a governmental entity. Consequently, Plaintiffs' allegations as to Defendant City must comport with the Texas

Tort Claims Act, the Texas Constitution, and/or common law proprietary functions. Plaintiffs' allegations as to Defendant City fail to comply with the law. Defendant City respectfully requests that Plaintiffs properly plead their cause of action pursuant to the law and the Texas Rules of Civil Procedure.

II.

Defendant City excepts and objects to Plaintiffs' damages claims that do not comport with the Texas Tort Claims Act. Said Act allows recovery only for personal injury and/or death. Defendant City respectfully requests that Plaintiffs properly plead their cause of action pursuant to the law and the Texas Rules of Civil Procedure.

III.

Defendants City, Reid and Miller except and object to Plaintiffs' Original Petition in its entirety because it fails to specify the total amount for which Plaintiffs sue Defendants, in violation of Rules 47 and 56 of the Texas Rules of Civil Procedure.

IV.

GENERAL DENIAL

Defendant City, Defendant Turek and Defendant Miller generally deny each and every, all and singular, the allegations contained in Plaintiffs' Original Petition, and upon their denials, demand strict proof by a preponderance of the credible evidence.

AFFIRMATIVE DEFENSE

V.

Defendant City affirmatively pleads the exemptions from liability contained in Sections 101.021, 101.022, 101.026, 101.055, 101.056 and 101.057 of the Texas Civil Practice & Remedies Code.

VI.

Defendant City would show that liability of Defendant City in this case, if any, is limited pursuant to Sections 101.023 and 101.024 of the Texas Civil Practice & Remedies Code.

VII.

Defendants Turek and Miller would show that at all times relevant to the occurrence described in Plaintiffs' pleadings, Defendants were acting in their official capacities for The City of Lago Vista. Defendants were performing discretionary functions in good faith, and therefore, are immune from suit and liability under the doctrine of official immunity.

VIII.

Defendants City, Turek and Miller allege, by way of affirmative defense, that the conduct of Gail Atwater and Michael Haas, M.D., whether acting singly or together, or in concert with others, was the sole proximate cause, or alternatively, a proximate cause of Plaintiffs' injuries, if any. Defendants City, Turek and Miller allege that the

conduct of Plaintiffs at the time and on the occasion made the subject of this lawsuit resulted in the injuries claimed herein by Plaintiffs, and that said conduct was willful and intentional, and caused Plaintiffs' injuries.

WHEREFORE, PREMISES CONSIDERED, Defendants, CITY OF LAGO VISTA, BART TUREK and FRANK MILLER, pray this matter be set for hearing with proper notice to all parties; and upon hearing, that the Court sustain Defendants' Special Exceptions; and that judgment subsequently enter in favor of said Defendants; and for such other and further relief to which these Defendants may be justly entitled.

Respectfully submitted,

FLETCHER & SPRINGER, L.L.P.
823 Congress Avenue Suite 510
Austin, Texas 78701
(512) 476-5300
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By: /s/ William W. Krueger, III
William W. Krueger, III
State Bar No. 11740530
Joanna R. Lippman
State Bar No. 00791122

Attorneys for Defendants
THE CITY OF LAGO VISA; BART TUREK; and FRANK MILLER

Certificate of Service

I here certify that a true and correct copy of the foregoing and attached **Special Exceptions And Original Answer Of Defendants The City Of Lago Vista, Bart Turek And Frank Miller** has been provided to the offices of:

Charles Edward Lincoln, Esq.
Post Office Box 4340
Lago Vista, Texas 78645

by Certified Mail Return Receipt Requested, by facsimile transmission, and/or by hand delivery, in accordance with the Texas Rules of Civil Procedure, on 9/8/97, 1997.

/s/ William W. Krueger III
William W. Krueger III